

APPEAL NO. 022074  
FILED SEPTEMBER 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on July 18, 2002, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 17th, 18th, and 19th quarters. The claimant contends that the evidence is insufficient to support the hearing officer's determination that because she failed to establish that she made a good faith attempt to obtain employment commensurate with her ability to work, she did not prove her entitlement to SIBs for the quarters at issue. The response filed by the respondent (self-insured) contains a detailed recitation of the evidence the self-insured believes supports the hearing officer's "good faith attempt" findings. The hearing officer's finding that the claimant sustained a serious injury with lasting effects and that her unemployment during the qualifying periods at issue was a direct result of her impairment was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The requirements for entitlement to SIBs are set out in Sections 408.142 and 408.143 of the 1989 Act and in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Concerning the SIBs entitlement criterion at issue in this appeal, Rule 130.102(d) and (e) provide five ways in which a claimant can prove that, during the qualifying periods, he or she attempted in good faith to obtain employment commensurate with his or her ability to work. Although the claimant introduced some documents from the Texas Rehabilitation Commission (TRC) reflecting that she applied to that agency for vocational rehabilitation services on September 19, 2001, and that on February 1, 2002, she and her TRC counselor executed an individualized plan for employment providing for TRC counseling services from February 1, 2002, to February 1, 2003, and for the purchase by the TRC of both medical consultation for pain management and psychological counseling at some undetermined time between February 2002 and February 2003, the claimant did not contend at the hearing, nor does she on appeal, that she satisfied the "good faith attempt" criterion for SIBs entitlement by proving that, during any of the three qualifying periods at issue, she was "enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] . . . ." Rule 130.102(d)(2). The claimant does not challenge the finding that she "had limited contact with TRC during the end of the qualifying period for the 17th quarter" and "did not participate in any full time rehabilitation program sponsored by the TRC or by a vocational consultant." Rather, the claimant's position below, a position she maintains on appeal, was that during the 17th quarter qualifying period she met the "good faith attempt" criterion by looking for work each week of the qualifying period and by eventually obtaining employment, and

that she met the “good faith attempt” criterion during the qualifying periods for the 18<sup>th</sup> and 19<sup>th</sup> quarters by working at a job commensurate with her ability to work.

The claimant testified that due to the back pain from her \_\_\_\_\_, slip-and-fall injury, for which she has had only conservative, predominantly chiropractic treatment, she could only perform part-time sedentary work during the qualifying periods at issue and that this was consistent with the restrictions of her treating doctor. She stated that during the 17<sup>th</sup> quarter qualifying period (June 21 through September 18, 2001) she looked for such work, as reflected on her Application for [SIBs] (TWCC-52) for this quarter. That document reflects 21 contacts with potential employers by telephone or in person, including a telephone call to a Mr. P on July 9, 2001, and that at least one contact was made during each of the 13 weeks of that qualifying period. The claimant indicated that she limited her job search to part-time, sedentary work because her doctor said she cannot work an eight-hour day and that because she starts limping after three hours. However, the hearing officer, in weighing the evidence, was persuaded that, “the search appeared to be more of an attempt to satisfy the weekly requirement for a job search rather than a bona fide search for employment.” With respect to the 17<sup>th</sup> quarter, the hearing officer made the following findings of fact which the claimant challenges on evidentiary sufficiency grounds:

#### **FINDINGS OF FACT**

7. During the qualifying period for the 17<sup>th</sup> quarter, Claimant made a job search of about one job per week. The sum of the contacts was minimal, with some weeks consisting only of a follow-up call to an employer contacted or applied to earlier. There was limited evidence that Claimant took advantage of any newspaper or other advertising to assist her in her job search. There was limited evidence that many of the employers contacted actually had job openings.
8. Based on a totality of the evidence, and the limited time allotted to finding work, Claimant did not establish that she made a good faith effort to find employment commensurate with her ability to work during the qualifying period for the 17<sup>th</sup> quarter.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We are satisfied that these findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

With regard to the qualifying periods for the 18<sup>th</sup> and 19<sup>th</sup> quarters (September 19, 2001 through March 20, 2002), the claimant testified that after calling Mr. P, an

employee of her son's internet sporting goods sales business, on July 9, 2001, she commenced working at her son's business on September 24, 2001; that she worked three hours per day, five days per week for \$6.25 an hour; and that her duties, which she performed while alternating sitting and standing, consisted of answering telephone calls from customers, processing orders, and verifying customer's credit card data, and that the only physical activity involved was using the phone and operating a machine to verify credit card data. The claimant acknowledged having looked for work and having arranged her employment at her son's business before Dr. O, her current treating doctor, issued a Work Status Report (TWCC-73), dated September 21, 2001, stating that the claimant could return to work as of that date for a maximum of three hours of work per day with various restrictions. The claimant also said that she set her work hours to accommodate her visits to Dr. O's office for therapy sessions which she has been receiving three times a week for more than five years.

The claimant appeals findings that she had an ability to work during the qualifying periods for the 17th, 18th, and 19th quarters; that the medical evidence was insufficient to establish that she was able to work only three hours per day; and that, because she worked only 15 hours a week at \$6.25 per hour and did not attempt to find any other employment, she did not make a good faith effort to find employment during the qualifying periods for the 18th and 19th quarters. In her discussion of the evidence, the hearing officer recognizes that the fact that the claimant had some employment can be prima facie evidence of a good faith attempt to obtain employment commensurate with her ability to work. However, the hearing officer evidently determined, from all the evidence, including substantial medical evidence, that the claimant's work hours were self-limited, notwithstanding the TWCC-73 issued by Dr. O, and not commensurate with her ability to work. Again, we cannot say that such determination is against the great weight of the evidence. Cain, *supra*; King, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

---

Philip F. O'Neill  
Appeals Judge

CONCUR:

---

Gary L. Kilgore  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge